Supreme Court, U.S.
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No.

In the Supreme Court of the United States

HELEN ROSE MOLINARI,

Petitioner,

vs.

STATE OF ILLINOIS DEPARTMENT OF INSURANCE,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the United States Court of Appeals for the Seventh Circuit erroneously held that Petitioner's claim under the Americans With Disabilities Act was barred by the Eleventh Amendment.

II. Whether the United States Court of Appeals for the Seventh Circuit erroneously failed to conduct a de novo review of whether dismissal was proper.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully asks this Court to issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review that court's judgment and opinion entered on October 15, 2001.

OPINIONS BELOW

The October 15, 2001 decision of the United States Court of Appeals for the Seventh Circuit is not published and is reprinted in the appendix to this petition. The opinion of the District Court for the Northern District of Illinois, Eastern Division, Civil No. 01 C 2474 is not published and is reprinted in the appendix to this petition.

JURISDICTION

The United States Court of Appeals for the Seventh Circuit entered its judgment on October 15, 2001. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The United States District Court for the Northern District of Illinois asserted jurisdiction under 42 U.S.C. § 121101 *et seq*., 28 U.S.C. §§ 1331, 1343(4). The United States Court of Appeals for the Seventh Circuit Court of Appeals asserted jurisdiction pursuant to 28 U.S.C. § 1291.

Petitioner, Helen MOLINARI, ("MOLINARI"), was hired by the Respondent, The State of Illinois, Department of Insurance ("DOI"), on June 21, 1999, to work as a Financial Examiner Trainee. MOLINARI had been a conditioned CPA. The duties of a Financial Examiner were to examine the conduct of companies that are chartered in Illinois or do business in Illinois. At the time of her hire, MOLINARI disclosed that she had carpal tunnel syndrome, and that her syndrome was permanent in nature. Plaintiff was told that she would be trained for twelve months and that during said period, she would be on probation.

MOLINARI was initially assigned to Concordia Mutual Company. She was to receive training under Dave Grouley. Once Grouley left the department, MOLINARI's training was suspended. MOLINARI was subsequently assigned to work at Allstate Insurance in Northbrook, Illinois. MOLINARI received training from Nester Almaria. MOLINARI received her first review in August, 1999, which was satisfactory. Plaintiff was then reassigned to work under Raymond Thomas. Plaintiff performed tasks under Thomas with minimal guidance and supervision.

Approximately five (5) months into her training, MOLINARI had to take two days off of work due to her carpal tunnel syndrome. Plaintiff then received another re-

view (now six (6) months into her employment), which was satisfactory. From approximately January, 2000 to April, 2000, MOLINARI was assigned work under Michael Goldstein. When MOLINARI advised Goldstein that she was experiencing problems with her hand, Goldstein made a sarcastic remark about her disability. On or about April 17, 2000, MOLINARI advised Virginia Godek, Assistant Chief Examiner, that she was in pain and unable to lift a coffee pot.

Plaintiff subsequently received poor reviews from her supervisors, Goldstein and Thomas, who claimed that her handwriting was illegible and that she could not get an examination to be performed at Rush Prudential HMO & Prudential Insurance done on time. MOLINARI told her supervisors that she would try to improve her handwriting, but that it would be difficult because she would always have trouble writing due to her carpal tunnel syndrome. On or about June 6, 2000, Defendant advised Plaintiff that she would not be certified. Defendant then terminated MOLINARI's employment.

MOLINARI timely filed a charge of discrimination with the EEOC, charging the Defendant violated the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 121101. MOLINARI then filed a Complaint in the United States District Court for the Northern District of Illinois, where she alleged disability discrimination. In her original Complaint, Plaintiff sought monetary damages and other relief. In her Amended Complaint, MOLINARI sought only equitable relief. The district court dismissed Plaintiff's Amended Complaint pursuant to F.R.C.P. 12(b)(1), and MOLINARI appealed. The United States Court of Appeals for the Seventh Circuit summarily affirmed the district court's ruling.

Petitioner, Eloise MOLINARI, now seeks a writ of certiorari from this Court to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit.

REASONS FOR GRANTING THE WRIT

I.

Certiorari Should Be Granted Because The District Court and The United States Court Of Appeals For The Seventh Circuit Erroneously Found That Petitioner's Claim Was Precluded by the Eleventh Amendment.

Defendant moved for dismissal on the basis that the district court lacked jurisdiction to hear Plaintiff's claims. In support of its position, Defendant relied upon *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356 (2001). In *Garrett*, this Court held that states were immune from suit by private individuals under the ADA for claims of money damages. Relying upon *Garrett*, the district court noted that *Garrett* only applied to suits for money damages.

Pursuant to her Amended Complaint, MOLINARI abandoned her claim for monetary damages and chose only to seek equitable relief, including reinstatement to the position of Financial Examiner. The holding in *Garrett* was specifically limited to claims seeking money damages, relief that the Plaintiff was no longer seeking. Nonetheless, the district court, relying upon *Seminole Tribe v. Florida*, 517 U.S. 44, 58 (1996), held that regardless of the relief sought by the Plaintiff, it made no difference as to whether the claim was barred by the

Eleventh Amendment. Accordingly, the district court dismissed MOLINARI's Amended Complaint.

There are few recognized exceptions to the Eleventh Amendment's bar of immunity. But this "immunity from suit is not absolute." *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666, 670 (1999). One of the exceptions is that a State may expressly waive its immunity and consent to be sued in federal court. *See Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 238 (1985). The other recognized exception is that Congress may abrogate the sovereign immunity of the States when "it both unequivocally intends to do so and 'act[s] pursuant to a valid grant of constitutional authority.'" *Garrett*, n.3. However, thus far, the Supreme Court has only found a "valid grant of constitutional authority" to abrogate the States' immunity in Section 5 of the Fourteenth Amendment. *See Garrett*, 121 S. Ct. at 963; *Seminole Tribe*, 517 U.S. at 59-66.

Garrett, however, specifically provided that:

> States' sovereign immunity from suit by private individuals for money damages under Title I does not mean that persons with disabilities have no federal recourse against discrimination. Title I of the ADA still prescribes standards applicable to the states. Those standards can be enforced by the United States in actions for money damages, ***as well as by private individuals in actions for injunctive relief*** under *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 741 (1908). In addition state laws protecting the rights of persons with disabilities in employment

> and other aspects of life provide independent avenues of redress.

Board of Trustees v. Garrett, at n.9 (emphasis supplied).

Other courts have concluded that *Garrett* is not an automatic bar to a private plaintiff's ADA claims. In *Doe v. Rowe*, 156 F. Supp. 2d 35 (1st Cir. 2001), the First Circuit Court of Appeals held that mentally handicapped voters were not barred from bringing suit under the ADA against the state under Title II pursuant to *Garrett*. The court declined to apply *Garrett* since the plaintiffs in that case were only seeking injunctive relief as opposed to money damages. In *Wroncy v. Oregon Department of Transportation*, 2001 U.S. App. LEXIS 8761 (9th Cir. 2001), the Ninth Circuit similarly held that the state was not immune from suit under Title II of the ADA where plaintiff alleged that she was extremely sensitive to chemicals and that the Oregon Department of Transportation violated the ADA by refusing to stop spraying herbicides on roads near her home. The Court accordingly reversed the district court's decision to dismiss plaintiff's complaint.

Consequently, the United States Court of Appeals for the Seventh Circuit's opinion and judgment affirming the United States District Court for the Northern District of Illinois granting the DOI's Motion to Dismiss, should be reversed.

Certiorari should be granted so that MOLINARI's ADA claim may be properly reviewed.

II.

Certiorari Should Be Granted Because The United States Court Of Appeals For The Seventh Circuit Erroneously Failed To Conduct A De Novo Review Of Whether Dismissal Was Proper.

In the instant case, MOLINARI was represented by counsel at the district court level. On appeal, however, Plaintiff proceeded *pro se*. MOLINARI filed a Motion for Appointment of Counsel. The Seventh Circuit denied MOLINARI's Motion, and then summarily affirmed the order of the district court. In the instant case, the Seventh Circuit erred by failing to undertake a de novo review of the district court's judgment of whether dismissal was proper under the Eleventh Amendment. *MCI Telecommunications Corp. v. Illinois Bell Telephone Co.*, 222 F.3d 323, 337 (7th Cir. 2000). Had the Seventh Circuit analyzed the district court's judgment, it would have undoubtedly concluded that MOLINARI's claims were not barred under *Garrett*. *Doe v. Rowe*, 156 F. Supp. 2d 35 (1st Cir. 2001).

Consequently, the United States Court of Appeals for the Seventh Circuit's opinion and judgment affirming the United States District Court for the Northern District of Illinois granting the DOI's Motion to Dismiss, should be reversed.

Certiorari should be granted so that MOLINARI's ADA claim may be properly reviewed.

CONCLUSION

For the aforementioned reasons, Petitioner, HELEN MOLINARI, respectfully prays that this Honorable Court grant *Certiorari*, reverse the United States Court of Appeals for the Seventh Circuit, and remand for further proceedings.

Respectfully submitted,

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